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Paper No. 14
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Knoll, Inc.

Serial No. 75/555,098

Carla J. Vrsansky of Buchanan Ingersoll, P.C. for Knoll, Inc.

Catherine Krebs, Trademark Examining Attorney, Law Office 108 (David Shallant, Managing Attorney).

Before Chapman, Bottorff and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On September 18, 1998, Knoll, Inc. (applicant) filed a trademark application to register the mark STONES (typed drawing) for goods identified as "office and residential furniture" in International Class 20.¹

¹ The abovementioned application to register is based on an allegation of a bona fide intention to use the mark in commerce.

The Examining Attorney ultimately refused to register the mark on the ground that the mark, when applied to the goods, is deceptively misdescriptive under Section 2(e)(1) of the Trademark Act. 15 U.S.C. § 1052(e)(1). After the Examining Attorney made the refusal final, applicant filed a notice of appeal. Both applicant and the Examining Attorney have filed briefs, and an oral hearing was held at the request of applicant.

We affirm the Examining Attorney's refusal to register.

The Examining Attorney's position is that the mark STONES is deceptively misdescriptive when used in connection with office and residential furniture. The Examining Attorney relies on dictionary definitions of the word "stone" and printouts from an online database and the Internet. The database printouts show that the term "stone" is used to describe furniture.

His white-walled rooms furnished with over-scale **furniture** often made from **stone**, timber or wicker - still constitute many people's idea of "the California look." *San Francisco Chronicle*, April 14, 1999, p. 1/Z1 (Home).

Padraig O'Murchu, who mines the Wicklow mountains for 500-million-year-old quartzite to make his **stone furniture**, which he calls "the newest antique furniture you'll ever find." *New York Daily News*, March 14, 1999, p. 22.

From the Internet, the Examining Attorney included information that showed that stone is used to make furniture. The information from the RMG Stone Products, Inc. website contains the following information: "The Vermont Marble & Granite Manufacturer of Fine Stone Products." The list of stone products that follows includes "Marble & Granite Furniture" and "White Marble & Granite Balance Tables." The Examining Attorney also made of record evidence from the Leelanau Furniture Show website, which included an entry under "Stone." This entry continued by describing stone as "Enduring. Timeless. Infinitely variable. In weight and in color, stone lends strength." The pictures under the heading "stone" were for a "stone lamp" in which the base was covered with small stones and another picture for "outdoor furniture." The Examining Attorney concludes by arguing: "Because applicant's office and residential furniture will apparently neither be composed of multiple stones per piece nor constructed of singular large stones adapted to function as single items of furniture, and because consumers are likely to believe the furniture is composed of or from stones, the proposed mark as used in connection with applicant's goods is deceptively misdescriptive." Examining Attorney's Appeal Br., p. 4.

In response to the refusal to register, applicant makes several arguments. First, it argues that its furniture has a smooth appearance and that consumers would not believe that it is made of stone. Applicant's Appeal Br., p. 3. Second, it asserts that the term was not selected to describe a feature of the products, but rather "the mark suggests a random collection of "stones" or nature objects." Id. at 4. Third, applicant's mark is the plural word STONES and not the singular word STONE, and the plural is not descriptive for furniture made of stone. Applicant's conclusion is that its mark "STONES has nothing to do with 'stone' or in trying to mislead or deceive consumers into believing that Applicant's goods are made of 'stone' or 'stones'... Applicant respectfully submits that consumers would not be misle[]d into believing that Applicant's furniture is actually comprised of numerous 'stones' glued together." Applicant's Appeal Br., pp. 6-7.

The issue in this case is whether the term STONES is deceptively misdescriptive of applicant's goods. In cases involving the issue of misdescriptiveness, we apply the following test:

The test for deceptive misdescriptiveness has two parts. First we must determine if the matter sought to be registered misdescribes the goods. If so, then we must ask if it is also deceptive, that is, if anyone is likely to believe the misrepresentation.

Gold Seal Co. v. Weeks, 129 F.Supp. 928 (D.D.C. 1955),
aff'd sub nom. S.C. Johnson & Son v. Gold Seal Co.,
230 F.2d 832 (D.C. Cir.) (per curiam), cert. denied,
352 U.S. 829 (1956). A third question, used to
distinguish between marks that are deceptive under
Section 2(a) and marks that are deceptively
misdescriptive under Section 2(e)(1), is whether the
misrepresentation would materially affect the decision
to purchase the goods. Cf. In re House of Windsor,
Inc., 221 USPQ 53 (TTAB Dec. 14, 1983).

In re Quady Winery, Inc., 221 USPQ 1213, 1214 (TTAB 1984).

The abovementioned evidence supports the Examining Attorney's position that the term "stone" describes a type of furniture that is made of stone. There is furniture that not only is made from stone material such as marble, granite, and quartzite, but it is referred to as "stone furniture." Therefore, we conclude that the term would be merely descriptive of furniture made of stone. Similarly, the term "stone" would deceptively misdescribe furniture that was not made from stone.

Applicant argues that potential purchasers of applicant's furniture will not be deceived into believing that the goods are made of stone (Appeal Br., p. 5). It is important at this point to observe that applicant's identification of services reads simply "office and residential furniture." At several points in its papers, applicant describes its goods in much more narrow terms. It refers to its goods as "low elliptical tables and

seats." It refers to its furniture as "highly stylized" and a "unique design." However, these descriptions of applicant's furniture in its papers do not limit the goods described in the application.

We are constrained to consider the issue of misdescriptiveness based on the goods as described in the application. Octocom Systems Inc. v. Houston Computers Services Inc., 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which sales of the goods are directed"); In re Vehicle Identification Network, Inc., 32 USPQ2d 1542 (TTAB 1994) (Descriptiveness of mark in an intent-to-use application determined by services identified in application). Indeed, the "fact that the true nature of the product might appear on the label for the goods or on other matter used in connection therewith cannot serve to alter the deceptively misdescriptive character of the mark in issue." American Meat Institute v. Horace W. Longacre, Inc., 211 USPQ 712, 723 (TTAB 1981). Therefore, even if applicant's purchasers

will ultimately realize that its goods are not made of stone or that the term is associated with a well-known designer and artist, these factors do not avoid a determination that the term is deceptively misdescriptive.

Applicant also argues that the mark is not misdescriptive because the term for which it seeks registration is not STONE but STONES. While applicant "acknowledges that furniture can be composed of stone," (Response dated November 5, 1999, p. 2), the "trademark applied for is STONES (plural) and Applicant respectfully submits that the mark STONES does not describe or misdescribe" ... the goods. Applicant's Appeal Br., p. 5. Furthermore, applicant argues that "[e]ven if the mark STONES could be considered descriptive, it is not deceptively misdescriptive. That is so because when furniture is made from stone, the singular is always used to describe it, never the plural." Reply Br., pp. 1-2.

We reject applicant's argument because the plural form of the word does not change the meaning of the word "stone," and the mere pluralizing of a term is not sufficient to convert this unregistrable term into one that is registrable. Wilson v. Delaunay, 245 F.2d 877, 114 USPQ 339, 342 (CCPA 1957) ("There is no material difference in the trademark sense between the singular and plural form of

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the word 'Zombie' and they will therefore be regarded as the same mark"). See also In re Sarjanian, 136 USPQ 307, 308 (TTAB 1962) (same); In re Directional Marketing Corp., 204 USPQ 675, 677 (TTAB 1979) (addition of the letter "S" did not overcome surname refusal); and In re Luis Caballero, S.A., 233 USPQ 355, 357 (TTAB 1984) ("Nor does it matter that the subject matter of the application is a plural (or possessive) form of a name").

In addition, there is the analogous principle that even the slight misspelling of a descriptive term does not overcome a refusal to register. In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505 (CCPA 1980) (QUIK-PRINT); In re Hercules Fasteners, Inc., 203 F.2d 753, 97 USPQ 355 (CCPA 1953) (FASTIE); and In re Organik Technologies, Inc., 41 USPQ2d 1690 (TTAB 1997) (ORGANIK). We have held that even a different term, which looked and sounded like a generic term, was itself deceptively misdescriptive. American Meat Institute, 211 USPQ at 723 (BAKED TAM deceptively misdescriptive for a chopped, formed turkey meat product).

Applicant's plural ending of, in this case a misdescriptive term, is even less distinctive because, at best, it may be viewed as a slightly unusual use of the word "stone," or it may viewed as a term used to describe

furniture or a set of furniture items made from more than one type of stone or from several individual stones. See, e.g., RMG Stone Products website ("marble and granite furniture" and "white marble and granite balance tables"). Because applicant's furniture is not made from stone in any way, the term would be deceptively descriptive of the goods.

Finally, applicant has submitted copies of several registrations that include the term "stones" without a disclaimer. Nearly all of these registrations are for goods that are not made of stone, i.e., beer, modems, computer hardware, underwear, tires, soaps, and skate wheels. The registrations to which applicant refers hardly demonstrates that the term "stones" would not be misdescriptive of goods when the evidence establishes that there is a type of furniture known as "stone furniture" and applicant's furniture is not made of stone.

Decision: The Examining Attorney's refusal to register the mark STONES on the ground that it is deceptively misdescriptive of applicant's residential and office furniture is affirmed.